FF-603

FACTFINDING PROCEEDINGS UNDER CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute between MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT and MARYSVILLE UNIFIED TEACHERS ASSOCIATION/CTA/NEA	REPORT AND RECOMMENDATIONS OF FACTFINDING PANEL PERB NO. SA-IM-2781-E August 31, 2004

Factfinding Panel

CHRISTOPHER D. BURDICK, Esq., Impartial Chair
KENNETH E. HALL, District Appointed Factfinder
JIM SCHLOTZ, Association Appointed Factfinder

Hearing

July 6, 2004

Appearances

For the District: James D Pinnel, Esq.,
Pinnel & Kingsley,
601 University Avenue, Ste. 265,
Sacramento, CA, 95825

For the Association: Mike Higginson, CTA Chapter Services Consultant,
1430 East Avenue, Ste. 1,
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INTRODUCTION

The Marysville Joint Unified School District ("District" or "MUSD") is a K-12 district located in largely rural Yuba and a slice of Butte counties, and includes thirteen (13) elementary schools, five (5) intermediate schools, two (2) comprehensive high schools and a number of other alternative or charter programs. The K-12 enrollment in October of 2003 was 9,854 students; the students of the ESD are primarily members of "minority groups", with only 45.8% of the student body classified as "white". Dist. Exs., Tab. 3. The District's student body is 14.2 Asian (Hmong), 0.4% Pacific Islander, 0.5 Filipino, 26% Hispanic, with *a de minimis* African-American enrollment. The District's enrollment appears to be declining at all levels. Nevertheless, the schools are generally academically successful.

The District employs approximately 997 people, of which 488 are certificated staff (more or less) in the Unit represented by the Marysville Unified Teachers Association (MUTA), an affiliate of the California Teachers Association ("CTA", "the Association", or "The Union").

In 2002, the District and the Association entered into a multi-year Collective Bargaining Agreement ("CBA" or "contract"), with a term of July 1, 1999 through June 30, 2003. Dist Ex 14. The parties negotiated on numerous occasions starting in November of 2003 in an effort to reach agreement on a full and comprehensive successor agreement. Failing to reach such an agreement, the parties then resorted[1] to mediation sessions with the California State Mediation and Conciliation Service ("CSMCS") but were ultimately unable to reach such an agreement on a number of issues. This Factfinding arises out of that impasse.

[1] The Association declined to declare impasse and resisted mediation, believing that continued negotiations would ultimately resolve the differences.

CHRISTOPHER D. BURDICK was appointed by the Pubic Employee Relations Board ("PERB") to serve as Impartial Chair of the Factfinding Panel. Kenneth Hall of California School Services was appointed to the Panel by the District and MUTA appointed Jim Schlotz, CTA Negotiations and Organizational Development Specialist. JAMES D. PINNEL, Esq., of the law firm of Pinnel & Kingsley appeared for the Employer, and MIKE HIGGINSON, CTA Chapter Services Consultant, appeared for MUTA. Both parties had previously waived, in writing, all of the time limits and deadlines set forth in Cal. Govt. Code Sections 3548.2 and 3548.3.

Hearing was held at District headquarters in Marysville on July 6, 2004, and the parties were afforded full opportunity to introduce documents and exhibits, to call and cross-examine witnesses, and to present arguments. At the conclusion of the evidentiary hearing, the parties waived oral arguments and, at the request of the Chair, submitted proposed Reports in support of their respective positions. The Factfinding Panel met in several executive sessions on July 6, 2004.

I

ISSUES

At the conclusion of mediation, three issues remained unresolved and were submitted to the Panel for hearing and recommendation:

1. Health and Welfare Benefits (paragraph C 2003/2004 School Year)

ISSUE	CONTRACT CITING	DISTRICT POSITION	ASSOCIATION POSITION
Payment of full premium cost for CVT Prudent Buyer Plan "D" for 2003/04 school year that exceeds "cap" amount of $657.00, which is $132.00 per month. (789)	Article XIV - Health & Welfare Fringe Benefits, A, 1. (Exhibit 1)	Effective October 1, 2004, District will provide two additional alternative health plans, one which will be fully paid and the other which will not require any additional employee out-of-pocket premium costs for the 2004/05 school year. (Exhibit 2)	For the 2003/04 school year, the District shall pay full cost of Central Valley Trust ("CVT") Prudent Buyer Plan "D" at an additional cost to the District of $824,217.

2. Early Retirement Incentive

ISSUE	CONTRACT CITING	DISTRICT POSITION	ASSOCIATION POSITION
Alternative retirement incentives	Article XX Retirement Incentive (Exhibit 3)	The District shall offer and an employee may select, in lieu of continued payment of health and welfare benefits, a contribution to a retirement annuity equal to 40% of the health benefit payment. The contribution shall continue to the age of 65, or 60 months, whichever is first. The amount shall be calculated on the cost of the health benefit in the first year of retirement.	Provide a permanent change to the contract to require the District to provide a retirement bonus equal to an additional two years of service for all District retirees with 15 years of District service. District payments for the added benefit shall be to STRS in accordance with AB1207/2003.

3. Peer Assistance and Review (PAR)

ISSUE	CONTRACT(AND EDUCATION CODE) CITING	DISTRICT POSITION	ASSOCIATION POSITION
Definition of "standard" Definition of "element" Definition of "Unsatisfactory Rating"	Article XXII, B, 1, 2, 6, 6.a and 6.b Article VI, Paragraph H (Proposed Article) Ed C§§ 44661.5 and 44662	District proposes revising contract language to be consistent with California Standards for the Teaching Profession ("Standards") (Standards attached as Appendix A). In so doing, this would clarify and provide succinct and clear definition of the expectations for teacher performance.	Association claimed District had failed to follow contract language, especially Article XXII, C.7., dealing with the establishment of an annual budget for the program.

However, during Factfinding, the position of the Association on PAR clarified. MUTA, in fact, had no objection to the District's proposal but believed the District was in chronic non-compliance with its existing contractual and statutory obligations, matters over which the Panel had no jurisdiction. The STRS costs of the Association's two retirement incentive proposals were finally (but reluctantly) conceded by the Association to be too dear in the present uncertain fiscal climate, and so, in its post-hearing written presentation, the Association withdrew those proposals.[2]

[2] It is unlikely that the Chair would have recommended either of the STRS "golden handshake" options, which must be paid in whole when the employee exercises the option and cannot be funded over future years. The recent experiences of many public agencies which have elected permissive STRS or PERS

II

STATUTORY CRITERIA

Gov. Code Sec.3548.2(b) mandates that the Panel consider and apply the following criteria in making its findings and recommendations:

(1) State and federal laws that are applicable to the employer.
(2) Stipulations of the parties.
(3) The interest and welfare of the public and the financial ability of the public school employer.
(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
(5) The consumer price index for goods and services, commonly known as the cost of living.
(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and other benefits received.
(7) Any other facts not confined to those specified in paragraph (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

III

PERTINENT CONTRACT LANGUAGE

The 1999-2003 CBA provided in pertinent part as follows:

ARTICLE XIV. HEALTH AND WELFARE FRINGE BENEFITS.

A. 2001/2002 School Year.

1. The District shall pay up to Six Hundred Seventy-Four Dollars and Sixty-Six Cents ($674.66) per month towards the costs of a medical/dental/vision benefit plan provided through the Central Valley Trust ("CVT"). This [sum] is an amount sufficient to fully the 2001/2002 cost of the CVT Prudent Buyer Plan "D" plus a dental and vision plan.

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service and formula options because they believed they were "super funded" have proven to be economically disadvantageous, as the funds have reviewed their members' actuarial experience and then have substantially increased the "normal employer contribution rate", even for many long-existing programs and formulas.

B. 2002/2003 School Year

1. The District will pay an amount yet to be determined per month toward the costs of a medical/dental/vision benefit plan provided through the CVT. This amount will be sufficient to fully fund the 2002/2003 costs of CVT Prudent Buyer Plan "D" plus a dental and vision plan.

C. 2003/2004 School Year

1. In the event of an imminent CVT increase, the District shall provide written notice of such to the Association which shall include a request to negotiate. No such premium increase shall be passed through to unit members shall be passed through to unit members until at least sixty (60) calendars days have elapsed since the District's request was provided to the Association

IV

POSITIONS AND ARGUMENTS OF THE PARTIES

The positions of the parties, and their arguments and rationales on the sole remaining disputed "Issue", are as follows:

DISTRICT - Health and Welfare Benefits. The key issue is the level of contribution by the District for health and welfare benefits for 2003-04. In 2003-2004 and to date, the faculty has absorbed the increases for maintenance of the health and welfare plan above the contracted "cap" of $657/month set by the 1999-2003 contract language quoted above. Dist Ex. 14, pp. 42-43. In 2000-01, the District and MUTA negotiated and agreed to increase the District cap for health benefits to absorb benefit cost increases of 14%. In 2002-03, the District and MUTA again negotiated and agreed that the District would absorb benefit cost increases of 29%. In 2003-04, the District declined to pick up any of the additional 18% CVT increase, although in accordance with the contract language, the District has maintained the CVT Plan D benefit level.

The District should not retroactively nor permanently increase the cap by $139.33 per month for 2003-04 and reimburse employees for payments they made during 2003-04. Total MUSD benefit plan costs (medical, dental, vision, income protection insurance, etc.) for employees are $11,205 per year. In 2003-2004, the District maintained its contribution at $9,533 per year, and since October 1, 2003, employees have contributed $139.33 per month for maintenance of their CVT "D" plans. The Association seeks both reimbursement of the out-of-pocket costs by employees and payment, on a 12-month basis, of an additional $1,672 in District payments per employee. The District proposes, in lieu of retroactive payment, that the CVT plans be expanded effective October 1,2004, to provide wider plan selection on a prospective basis. The District proposes to maintain its present maximum dollar contribution cap but offers to add two new, optional plans in addition to those currently offered (Plans "A" and "D"). Those two new plans, if elected, could lower or eliminate employee out-of-pocket costs. Under this approach, employees could select Plan E and maintain their current out-of-pocket monthly contribution of about $139.00 or they could elect Plan F and eliminate any employee premium payment. Thus, employees would have the new, following health insurance options, in addition to Plan D:

Coverages for Health and Welfare Options

PLANS	PLAN A (CVT PLAN 1)	PLAN D) (CVT PLAN 4)	PLAN E (CVT PLAN 6)	PLAN F (CVT PLAN 9)
D. Deductible • Individual • Family	**$0** **$0**	$100 $300	$250 $750	$1,000 $3,000
	100%	90%	80%	80%
	N/A	$300	$1,000	$3,000
	$0	$10	$10	Major Medical*
	$5/$12	$5/$12	$10/30%/50%	$7/$25/$40

* Plan F does not cover routine office visits or annual physicals. Office visits for illness or injury is covered under the major medical provisions this plan offers.

Rates, District and Employee Contributions for Health and Welfare Options

PLANS	PLAN A (CVT PLAN 1)	PLAN D (CVT PLAN 4)	PLAN E (CVT PLAN 6)	PLAN F (CVT PLAN 9)

	$755	$696	$633	$481
	$217	$217	$158	$176
	$972	$913	$788	$657
DISTRICT CONTRIBUTION	$657	$657	$657	$657
EMPLOYEE CONTRIBUTION	$315	$256	$131	$0

The District argues that this new approach is supported by the criteria of Section 3548.2, especially subsections (3; "the interests and welfare of the public and the financial ability of the public school employer"), (4: "comparison of wages, hours, and conditions of employment of the employers involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities"); and (6: 'the overall compensation presently received by employees, including direct wage compensation—insurance and pensions, medical, and hospitalization benefits—and all other benefits received).

Looking at "ability to pay", the District argues that it had a revenue loss of $1,848,651 in FY 2003-04, a result of the state not funding any school district cost-of-living increases, deferring funding for reimbursement of mandated costs, and a reduction in the school district's revenue limit of 1.2%, all reductions due to changes in state law as the state attempts to grapple with its own fiscal calamity and not as a result of any District actions. The District's Third Interim Report to the Board of Education and the public in May 2004 estimated that the District will have spent $523,353 more that it collected in income. The District's prediction of deficit spending led the County Office of Education to issue, in accordance with state law, a Qualified Financial Statement that provides cautions on the District's fiscal capabilities and solvency.

Full funding for health and welfare benefits for MUTA members would cost $824,217 (and, if extended to other MUSD employees, would cost more than $1.2 million). Translating this $824,217 to salary would be equivalent to a 3% salary increase. The District, to provide a 3% compensation increase, would reduce services to students by more than $800,000 if the benefit is provided to teachers.[3] or more than $1.2 million if the benefit is provided to all employees. This financial burden would significantly worsen the District's already qualified financial status.

The teachers received a pay increase of 3.87% on July 1, 2001 and an additional 1% on January 1, 2002. They have neither received nor asked for a salary increase since then.

Looking at a "comparison of wages . . . and . . . overall compensation", the District believes the data support its position. Claiming that from a budget point of view, "a dollar spent on the funding of benefits is the same as a dollar spent on employee salaries",[4] the wage and benefit levels of MUSD outstrip those of comparable institutions. Obviously, determining what is a "comparable institution" for analysis is key. The most preferable "comps" are those agreed upon and selected by the parties and used by them in their negotiations. Lacking such agreement the District argues that the Panel should only look to unified districts in the surrounding geographical area and of similar size.

The District provided a list of institutions used by the District and the Association in a factfinding in 2002, which included 19 unified school districts. Both parties and the factfinding panel found that the composite group of District and Association comparable agencies was acceptable during the factfinding of 2002. The Association provided data from 14 agencies, including four county offices, three elementary districts, and one high school district.[5]

The District suggests it is appropriate to use a composite of the District's and Association's selection, resulting in 19 districts from 2002 as appropriate comparative agencies. The Marysville USD in 2002-03, as compared the 19 comparable agencies:

[3] The Panel cannot consider the "ripple effect" on other units of our decision and recommendation here. There was no proof or evidence that the District was saddled with an imprudent "me-too" or "most-favored-nations" clause obligating it to give to other units what it gives to MUTA. Even if it was so contractually obligated, it cannot point here to its bad judgment there as a rationale for not dealing directly with MUTA on this issue.

[4] This is, of course, wrong. One dollar spent on increased health premiums is just one dollar. But one dollar spent on a higher salary is one dollar **plus** the inevitable "roll-up" costs inexorably tied to a salary dollar, the foremost of which is STRS contributions and increased future pensions.

[5] The District observes that one agency, Nielson High, cannot be found as a California school district and that only 5 of the 14 districts were used in the Association's factfinding comparisons of 2002.

- Spent more per ADA on employee health and welfare benefits than any of the 19 districts in the comparison group

- Spent more than 16 of the 19 districts in the comparison group in amounts per employee on health and welfare benefits

- At the lowest point on the salary schedule, MUSD's salary exceeded 16 of 19 districts in total compensation

- At BA plus 60 units at step ten on the salary schedule, Marysville's salary exceeded 16 of 19 districts in total compensation

- At the highest point on the salary schedule, Marysville spent the second highest amount in total compensation or, said another way, more than 18 of the 19 districts in the comparison group

- At the top of the schedule, 18 of the 19 comparable agencies would have to provide a salary increase ranging from 4.9% to 31% in order to match the compensation levels of Marysville.

The District presented evidence of the 2003-2004 salary and benefit settlements from other agencies. Only Orland USD and Washington USD had benefits above the Marysville health benefit contribution. In total highest compensation, however, Orland would have to increase its 2003-04 salaries 7% in order to catch up to Marysville; Washington would have to provide a 10.1% increase in order to catch up. The District submits that it has a very favorable total compensation package and, of the comparative agencies, none beat MUSD on a regular basis in "overall compensation."

ASSOCIATION - Health and Welfare Benefits. MUTA argues that forcing the District to pick up the 2003-2004 CVT Plan D premium increase in fact maintains the *status quo* between the parties. Notwithstanding the CBA's 2003-2004 "cap" on the District's contribution, the longstanding practice is to maintain "Plan D" as a fully paid plan and that the parties have consistently raised the cap to a level sufficient to pay the full premium for "Plan D". Indeed, MUTA has opted to keep benefits fully paid instead of pursuing salary increases and so made no wage proposal for 2003-04. In fact, MUTA insists that its Faculty waived salary increases in prior years to match the percent increases in the district's Base Revenue Limit. As a result, the percent of total outgo, or "piece of the budget pie" dedicated to bargaining unit salaries, has decreased over the past five years, from 47.92% of total outgo in 1998-99, to 46.46% in 2002-03.

MUTA argues that since the *status quo* has been to increase the benefits cap to a level sufficient to pay the full premiums for CVT Plan "D," the burden is on the District to justify why the *status quo* should be changed. MUTA suggest that the District's showing was not one of "inability to pay" but one of **budgeting** priority and argues that the District's priority should be protecting classroom expenditures, to keep a high quality educational program by maintaining the salary and benefit levels of the unit. It is against public interest to lower the compensation and standard of living for teachers who are so critical to the successful education of children. Decreasing the compensation and standard of living for bargaining unit members makes MJUSD less competitive in the labor market for highly qualified teachers.[6] All children need and deserve highly qualified teachers and any budgeting decision that reduces the district's ability to attract and retain highly qualified teachers is against public policy and should be rejected.

The District's refusal to raise the benefits cap to a level sufficient to pay for Plan "D" has cost bargaining unit members approximately $140 per month out of pocket to maintain their benefits, equivalent to a reduction in compensation and a reduced standard of living. MUTA argues that maintaining the compensation and standard of living for bargaining unit members is simply a cost of doing business. Although the District faces rising fuel and insurance costs, its fuel and energy suppliers do not accept "budgetary constraints" for failure to pay the going rate for their goods and services, and similarly this Panel should not accept "budgetary constraints" as justification for not "paying the going rate"[7] for the services of classroom teachers and other bargaining unit members. MUTA concedes that fiscal distress is going to be felt, no matter what, and the question is who feels the pain - the district or the teachers? New caps and the higher out-of-pocket premium costs have a disparate impact on members, e.g., the new teacher who makes $34,000.00 per annum pays the same as the veteran who makes more. If the new teacher

[6] MUTA introduced no evidence that MUSD was loosing experienced teachers to other districts with "better" packages or that the District had lost any "bidding wars" for new hires because of the MUSD pay and benefit package.

[7] MUTA assumed that its showing on comparability demonstrated a lag at MUSD. There was no such showing.

is a single mother with children, then the "program cuts" she must make when the cap is not raised includes groceries for the kids and rent/mortgage payments.

MUTA argues that the MUSD analysis is not one of "inability to pay" but one of unwillingness to pay. MUTA points to the ever-changing, unpredictable and confusing First, Second and Third Interim Reports, which show many variations in budgeted amounts over the course of the year. Between the Revised Budget from 9/16/03 and the First Interim Report on 12/9/03, the District reduced the budget for certificated salaries (1000 series) in the unrestricted budget by $488,688, and reduced the budget for employee benefits (3000 series) by $516,809, a combined reduction of over $1 million in expenditures on employee compensation. MUTA believes the District "manufactured" the budget calamity and claimed the Superintendent had purposefully sought a Qualified Financial Statement to build a rationale for rejecting retroactive payment for health benefit costs.[8]

MUTA contends that if the District budget had simply maintained originally planned expenditure lines for compensation, it could maintain the standard of living for the MUTA unit, because the cost of maintaining the benefits cap at a level sufficient to pay the full premium for CVT Plan "D" is less than the budget reductions in the unrestricted 1000 and 3000 series. Instead of dedicating available monies to the highest budget priority - attracting and maintaining highly qualified teachers - MUSD redirected monies away from compensation to other areas of the budget. The percent of unrestricted total revenue budgeted for the 1000 series was 51.45% on September 16, 2003. By December 9, 2003, the District had reduced this percentage of total unrestricted revenue dedicated to certificated salaries to 49% and the percent of unrestricted revenue budgeted for the 3000 series, Employee Benefits, had declined from 21.43% to 20.2% in the same period.[9]

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[8] The Association, however, could not provide any direct testimony or documents in support of this belief.

[9] But the Association's evidence also showed that the District's net ending balance had dropped significantly. An exhibit entitled "Changes in Revenues, Ending Balance and Reserves" demonstrated that the District's net ending balance at the conclusion of 2002-03 had dropped by 30.8%, or $1,687,632. MUTA conceded that the District's projected ending balance for 2003-04, based on the Third Interim Report, would drop by $523,353, or 13.81%.

IV

TERM

The parties had formally submitted to mediation the three issues described above, in anticipation of only a one-year CBA thereon, although they had had many off-the-record discussions (and with the Chair Factfinding, as well) about a possible long-term CBA. The District seeks a recommendation on a two-year CBA, an approach MUTA strenuously opposes. Thus, their post-hearing written arguments differ on this issue. The Association simply states that"... .since term of agreement cannot be bargained to impasse, and since the MUTA will not agree to a second year, this agreement shall be for the 2002-03 school year only, i.e. a one-year term." CTA Proposed Report, at p. 3.

MJUSD states:

> Although a two-year contract question has not been formally posed to the panel, it is appropriate for the panel to consider a two-year contract settlement for the issues that have been submitted. Fiscal year 2003-04 has been concluded and the parties should be resolving negotiation issues of 2004-05. This panel cannot in good conscience walk away from the parties' disputes without also making recommendations for conclusion of the contract for 2004-05.
>
> For those who question the authority of the panel to extend its recommendations to issues that were not included in the specifics of the factfinding charge, the panel calls attention to the purpose of the collective bargaining law and the role of appointees to a factfinding panel.
>
> Government Code Section 3540 states that it is the "Purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school system . . ." Government Code Section 3548.1 indicates that the mediator shall call for factfinding to assist in the "... resolution of the impasse ..."
>
> This panel would not be meeting the intent of the collective bargaining law to promote the improvement of employer-employee relations, nor meeting its obligation for a resolution of the impasse, unless it makes recommendations for 2004-05 as well as 2003-04.
>
> This concept is not new to either party to this dispute. Both parties have worked diligently with the panel in an attempt to mediate the dispute for both 2003-04 and 2004-05.

MUSD Proposed Report, at pp. 9-10.

The CVT "year" is October 1-September 30, whereas the CBA runs on a fiscal year basis. The District argues with some persuasiveness that if all this Panel does is deal with FY 2003-2004, it not only gives the parties no guidance for the fiscal year already two months in play but ignores the realties of the District's contractual dealings with CVT and the manner in which CVT calculates and charges premium.

Because the parties discussed, proposed and counter-proposed long-term CBA alternatives in both mediation and in factfinding, the Panel will make a recommendation on both a one-year and two-year CBA, *infra.*

VI

THE CHAIR'S FACTUAL DISCUSSION AND ANALYSIS

The argument, on both sides, is all about money — its availability, fungibility, prioritization, and the size of the reserves Like so many disputes in the labor world today (public- and private-sector), the fight is over "who pays how much" for health and welfare insurance premiums. The explosion in the cost of medical insurance (and the disappearing number of choices in the market place) has created a seller's market, in which the HMOs and insurers feel free to push premium increases on to consumers at rates 3 or 4 times the increase in the general CPI. For many years, California's public employees (including those in the school setting) have often been insulated from these pressures. That situation is rapidly changing.

The United States is the only major industrialized country where the individual - and not "the state" - is primarily responsible for the provision of medical and hospitalization care. Except for our poorest, Americans are expected to provide their own health care: the majority of those who can do so *via* insurance. For historical reasons unique to this country,[10] employers (public and private) carry the great majority of that burden by providing health insurance plans (or trusts) to their employees and dependents. The growing explosion in the costs of health care (and the insurance to cover it) is increasing annually at a rate 3 to 4 times higher than the increase in the CPI generally. As

[10] One academic suggests that the practice started during World War II, when wage and price controls were in effect and creative employers competed for scarce workers by offering paid medical insurance, something not covered by the wage controls of the Office of Price Administration (OPA). Andreopolous,

a result, employers are increasingly asking their employees to bear more of the costs of insurance, either through increased payment of the premiums, narrower coverage, co-pays, deductibles, or some combination thereof. Thus, The New York Times reported on October 22, 2003, as follows:

> As health care costs head into a fourth year of double-digit increases, employers are shifting a growing share of the burden onto people who make the heaviest use of medical services.
>
> The trend - evident as companies begin informing workers of their benefit choices for the coming year ~ take the form of fast-rising co-payments and deductibles, higher payroll deductions to cover spouses and children and new kinds of health plans that give workers a fixed sum to spend.
>
> On average, the annual out-of-pocket costs for employees of large companies have more than doubled since 1998, to $2,216 this year ... [and is expected to increase by] a 22 percent jump next year, to $2,595.
>
> . . . .
>
> Employers still pay the bulk of their workers' health care bills, but their contribution has slipped over the last five years to 70 percent of total health care costs from 75 percent.
>
> ....
>
> Some health care economists - and many insurance companies - argue that costs will never get under control until the users of medical services feel the financial sting... In its more restrictive forms, managed health care made patients jump though hoops to obtain treatment, but experts said it did too little to expose consumers to the true costs of health care.
>
> "Employees who were paying $20 for a doctor visit had no idea that the average cost was $93", said Liz Rossman, vice president of health benefits at Sears, Roebuck & Company. In the current sign-up period, Sears is hoping that many employees will select new plans that require them to pay 20 percent of the full cost of doctor visits, or 25 percent for going outside the Sears network.

The New York Times, October 22, 2003, C1-C2.

Not surprisingly, the modern-day allocation of health care risks and costs has sparked increasing scrutiny and criticism. Those who believe that employees need to pay a greater portion of their own insurance costs are typified by the advocacy group Americans for Free Choice in Medicine, whose publication **Pulse** stated recently as follows:

"National Health Insurance: Can We Learn from Canada" (Wiley & Sons, 1975), quoted in The San Francisco Chronicle, November 7, 2003, at p. A27.

> In essence, the debate is confrontation between those who favor something for nothing and those who refuse to provide it. The union demands that workers pay nothing for their own health insurance. The [Southern California] grocery stores [Vons, Ralph's and Safeway], like most employers, are no longer willing to pay 100 percent of each employee's rising health insurance premiums: grocers insist that workers start paying for $5 a week for an individual policy or $15 a week for a family plan.
>
> If you are self-employed, you know how much health insurance really costs, because you are among the few who actually pay their own way through today's mixed, half-socialized health-care system. If you work for a small business, you're likely to pay for most of your own health-care costs and premiums. If you work for a major employer, your paycheck is probably smaller due to some health-care withholding. In any case, co-payments and premiums are rising.
>
> . . . . . . America's struggling employers are finally accepting reality and acknowledging the limits of employer-based, cradle-to-grave health-care coverage. It took business 30 years to admit that HMOs neither cut costs nor offer the best health insurance. They now realize that heath insurance - like auto, home and life insurance - must be paid for by the insured, at least partly.
>
> Yet the striking grocery employees have declared, by a 97 percent vote, that they are born with a right to health care - funded by the business that hired them.... In short, striking workers want more money while their employer is making less money, and they want health care paid by the employer, too.

Pulse, quoted by The San Francisco Chronicle, December 7, 2003, at p. A27.

On the other side are such organizations as The National Health Law Program ("NHLP"), a group representing low income Medicare participants which argues that there is no reliable data showing that increased premiums, copays, deductibles or co-insurance actually "rationalize" utilization by recipients. See NHLP's undated study "Question and Answer: Impact of Increased Cost-Sharing on Medicare Beneficiaries", a reply to a report from the General Accounting Office ("GAO") suggesting that they do (GAO: "Medicare Cost -Sharing Policies Problematic for Beneficiaries", Program # GAO-01 -713T, May, 2001). In the George Washington University National Health Policy Forum Report of May 14, 2004, the authors state:

> Even though employees are paying more for health care, their share of the cost has not kept pace with total spending. Consume out-of-pocket spending accounted for 25 percent of total private health care expenditures in 2002, down from 33 percent in 1990.
>
> .... Studies show that increased coinsurance, copays, and deductibles slow demand for routine and doscretionary6 acre in the short term. But it is not clear at what point cost sharing hampers treatment compliance. . . . and [s]ome studies

> show that even moderate cost sharing creates financial hardship for low-income and chronically ill individuals.
> .... Another hallmark of recent cost-sharing is a shift from copays to coinsurance. Again, the purpose is to sensitize consumers to the financial consequences of their choices....

A brief survey of relevant studies by the Chair indicates that most of the research indicating that increased employee sharing in premiums, copays, etc. does not impact utilization deals with poor or low-income beneficiaries of state and federal programs, a group not here in question. Applying the relevant criteria to this disputed item, we look primarily to Sec. 3548.2 (3) [the interest and welfare of the public, including ability to pay]; (4) [comparison of District benefit contributions with other similar employers]; and (6) [the overall compensation received by Union members].

The MUTA philosophical approach ("District to pay the 'full costs'") would saddle the District during the life of any CBA (and, we assume, if the Association had its druthers, in all future CBAs) with carrying the entire risk of future CVT premium increases, without cap or limit. The District insists on "negotiating dollars", and not "coverage", on a "total package/total costs" basis, which it insists it needs to do to predict and control its costs. As part of this approach, MUSD suggests two new CVT plans through which employees could cover themselves and their families (albeit at a greatly reduced benefit level, with higher deductibles and co-pays) at 2003-04 rates (Plan E) or at no cost (Plan F).

The Association urges the rationale of the NHLP, rejects the new plans because they substantially lower benefits and increase deductibles and co-pays and, in essence, asks the Panel to allow CVT to pass on to the District whatever CVT chooses to charge for Plan "D". MUTA accurately observes that it has waived salary schedule increases since 2002 as the *quid pro quo* for the District picking up the Plan D increases. The District rejoins that forcing it to do that again in 2003-2004 is tantamount to a 3% salary increase, a sum which it would not (and could not, it claims) have paid if it wanted to.

The District's proposal to add two new programs is an offer of an improved "benefit" which is far more apparent than real. The District offers no new money at all to help employees to defray the greatly increased 2003-2004 costs (and the proposed "new plans" will not be available in any case until October, 2004). The new plans, if elected, will probably save employees little, if anything, in the long run. An employee who elected Plan F (which would be free to the employee and paid entirely by the District) will see his/her deductible shoot from $ 100/$300 to $ 1000/$3000 and his/her "out-of-pockets" go from $$300 to $3000, with his/her drug benefit substantially cut. In health insurance there is "no free lunch" ~ if the premium is lower, it is because the benefits have been decreased and the deductibles and the co-pays have gone up.

The MUTA claim that the past practice is "District pays all" is only partially correct. This may have been the District practice in years past, but in the last CBA the District went to some pains to make it clear to MUTA and its members that in FY 2003-04 the District reserved it rights to pass the entire CVT increase on to the MUTA membership. See CBA, Art. XIV (A) (3). The District does not have a philosophical problem with the MUTA proposal - its position is based entirely on its present financial state (real or perceived). The question for the Panel is whether the money that MUTA wants is there or whether the decisions the Board of Education has made about the allocation of its limited funds should be respected.

The Chair is persuaded that the criteria of Gov Code Sec. 3548.2 (b) (3), (4), and (6)[11] here support the District's position, in part, on the health insurance premium contribution issue. In the private sector, the majority of non-union workers (who constitute about 85% of the workforce) pay a significant portion of their medical insurance premiums, and an increasing number of public employers have to deal with that reality as well. The Chair believes it is important for employees not only to share in the (ever-increasing) cost of that insurance but to appreciate and understand the impact on their premiums that excessive resort to medical care for even trivial matters may have. The MUTA Unit enjoys substantial, above-market fringe benefits, and it is not onerous to ask them to pay a nominal sum for their own health insurance.

The District had a revenue loss of $1,848,651 in the 2003-04 fiscal year because (a) the state did not fund any cost-of-living increase, and (b) deferred funding for reimbursement of mandated costs, and (c) reduced the District's revenue limit of 1.2%.

[11] Neither party has pointed to subsection (7) ["...other facts not confined to those specified in paragraph (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations..'], but the Chair has looked to the trends and realities of life in the larger health and

Full funding for health benefits for teachers would cost $824,217 and the District would need to shift revenues in the budget to provide retroactive payments. The District's Third Interim Report of May 2004 estimated that it will spend in 03-04 $523,353 more that it collects in income. This projected and actual deficit spending led to the County Office of Education to issue a Qualified Financial Statement that cautions on the District's fiscal solvency. MUTA's own evidence established that the District's net ending balance had dropped significantly. (See MUTA exhibit titled "Changes in Revenues, Ending Balance and Reserves" showing that the District's net ending balance at the end of 2002-03 had dropped by 30.8%, or $1,687,632 and that the District's ending balance of 2003-04, based on the 3rd interim report, had dropped by $523,353, or 13.81%.). To provide a 3% compensation increase the District would have to reallocate revenues internally, probably by reducing services to students by more than $800,000.

MUTA's rejoinder to this perilous economic picture is a simplistic review of the budget; the (correct) observation that there were more than sufficient funds in the 1000 and 3000 line series to pay for these benefits; and if the Board had only left those finds there and not moved them to other areas deemed more demanding, the CVT increase could easily be paid by the District. This MUTA observation is accurate but tantamount to proposing the rearrangement of the deck chairs on the Titanic. The Board does not deny that there is money in the budget to pay the increase - it is MUSD's position that if it spends that money on MUTA it will move it out of areas of higher educational and infrastructure priority, and that doing so is, in the long-term, economic suicide. The situation is somewhat akin to a family of modest but comfortable means with a tidy but discretionary pot for movies and entertainment which suddenly finds itself with greatly diminished revenues (one spouse loses a job) and which has to move money out of the "movies and entertainment pot" to the "rent and insurance pot", and then has to listen to the children bitterly complain that the cannot go to the movies anymore even though there is money in the "pot", as a whole, to buy the tickets and popcorn. At some point, the Panel has to give some deference to the allocations and decisions the elected Board has made about the priorities to which it will put its scarce and challenged resources.

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welfare world, as well as the political realities that school districts [indeed, all local public agencies] face in their present dealings with the State.

The Chair urges the parties to agree to drop the vision and salary protection insurance plans[12] in their entirety, at the earliest opportunity, and suggests that the District then shift those premiums directly to the CVT insurance. But this cannot be accomplished retroactively or before the end of FY 2003-2004, and thus arguably cannot be a formal part of the 2003-2004 recommendation in this Report.

VII

RECOMMENDATIONS

Based upon the general factual background set forth above, the Panel makes the following recommendations on the disputed issues:

The Chair is persuaded that the criteria of (3), (4) and (6) here support the District's position on the Health and Welfare issue. The Panel therefore recommends that:

1. No retroactive payment be made to employees for their out-of-pocket costs for the health and welfare benefit plans for 2003-04; and,
2. The District and Association agree now that, effective October 1, 2004, the Central Valley Trust shall expand the options for health and welfare benefits plans to include two new plans: Plans E and F that maintain or avoid employee health benefit contributions.

Although it is argued that the Panel lacks the power to recommend a settlement beyond FY 2003-2004, if the Panel had/has the power and jurisdiction to do so, the Panel would recommend as follows:

1. In addition to the recommendations made above for settlement of 2003-04, for FY 2004-2005, the District shall as quickly as is possible discontinue the vision services and the income protection plan, effective October 1,2004, and shall apply the monthly savings to district premium payments for CVT health benefits; and,
2. Upon termination of the vision and income protection plans, the District shall **both** apply the premiums saved from those terminations to the CVT plans **and** shall also increase its contribution for health and welfare benefits by an additional $82 per month per employee, effective October 1, 2004.

[12] These plans provide either relatively expensive benefits (the vision plan) or are typically underutilized (the salary protection plan), and the premiums would be far better spent on the CVT plans (which benefit everyone) than on these plans of limited utility.

3. Upon publication of the so-called "Unaudited Actuals" in September of 2004, the District shall allocate monies in the unrestricted reserves that are over the projected amounts from the June estimated "Actuals", and use that money to fund, to the extent possible, the full-costs of the CVT Plan D, on a prospective basis only. So, for example, if the estimated (from the June budget document) unrestricted reserve was $1,000, and when the closed books for the September "Unaudited Actuals" shows an actual reserve of $ 1,100, then the $ 100 - the amount over the projection - would be used to fund prospectively some, or all, of the premium out-of-pocket costs for 2004-2005.

4. If the combination of the savings from the termination of the vision and income protection plans, the additional $82.00 and any excess in the reserves should result in funds in excess of the sums needed to pay the total premium for CVT Plan D, then those excess funds shall be used to reimburse, on *a pro rata* basis, MUTA members for their out-of-pocket CVT premium payments in 2003-2004.

DATED: August 25,2004

Christopher D. Burdick
Impartial Chair

Although I do not necessarily agree with all of the Chair's findings and recommendations, nor do I support or endorse his *ratio decedendi* in ail aspects, nevertheless I believe it in the best interests of the parties to adopt the settlement recommended in this Report.

DATED: August 2, 2004

Kenneth E. Hall
District Appointed Factfinder

I respectfully dissent from the Findings and Recommendations on the Issue(s), for the reasons set forth in the attached Dissent.

21
DATED: August 2, 2004

Jim Schlotz
CTA Appointed Factfinder

FACTFINDING PROCEEDINGS UNDER CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute between MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT and MARYSVILLE UNIFIED TEACHERS ASSOCIATION/CTA/NEA	REPORT AND RECOMMENDATIONS OF FACTFINDING PANEL: **ASSOCIATION DISSENT** PERB NO. SA-IM-2781-E August 2004

Factfinding Panel

CHRISTOPHER D. BURDICK, Esq., Impartial Chair
KENNETH E. HALL, District Appointed Factfinder
JIM SCHLOTZ, Association Appointed Factfinder

Hearing

July 6, 2004

Appearances

For the District: James D Pinnel, Esq., Pinnel & Kingsley, 601 University Avenue, Ste. 265, Sacramento, CA, 95825

For the Association: Mike Higginson, CTA Chapter Services Consultant, 1430 East Avenue, Ste. 1, Chico, CA, 95926

ASSOCIATION DISSENT

This Panel Member agrees with the Panel Chairman's statement in his Factual Discussion and Analysis: "The argument, on both sides, is all about money - its availability, fungibility, prioritization, and the size of the reserves." I differ markedly, however, on the application of two key criteria given the Panel from the Government Code § 3548.2 (b); namely, (2) Stipulations of the parties, and (3) The interest and welfare of the public and the financial ability of the public school employer. The parties never stipulated that term of agreement was an issue before the Panel. Indeed, in the Report's section on issues, term of agreement is not listed. To be sure, the term of a possible agreement was discussed in executive session, when the parties were exploring settlement possibilities, but when those discussions ended without result, then the proper course for the Panel was to return its exclusive focus on the issues before it that were stipulated by the parties. The only remaining issue, after the Association modified or withdrew its position on the others, is the Employer's contribution toward the Association's bargaining unit members' health and welfare benefits.

Issuing recommendations for 2004-2005 exceeds the Panel's authority because doing so ignores the stipulations of the parties. It also unduly interferes with the collective bargaining process. It is accepted public policy in California to use collective bargaining to settle issues regarding salaries, benefits, and other terms and conditions of employment of certificated employees with their public school employers. The Association desires to resolve any issues for 2004-2005 by using the collective bargaining process that law and accepted public policy make available to them, and when the Panel exceeds its authority by issuing recommendations for 2004-2005, then the Panel risks prejudicing the bargaining process.

An example of this risk is easy to see. In one possible scenario, the Association makes a proposal for health and welfare benefits, but instead of independently and thoroughly evaluating that proposal in light of the current conditions (which may indeed be different from what this Panel can predict), the Employer is constrained in its response because the proposal is different than the Panel's recommendations. Since the Report of this Panel is made public, it is easy to imagine the political ramifications to the Governing Board if it wants to bargain in good faith yet deviate from recommendations given to the parties. In other words, recommendations from the Panel for 2004-2005 could prevent the Employer from being flexible, imaginative, or adaptive to new conditions in its bargaining with the Association.

In another scenario, one could imagine the parties bargaining without agreement, and then proceeding to impasse. If impasse leads to another fact-finding hearing, then the parties could be faced with two different fact-finding reports for the same year. This would clearly subvert and confuse the bargaining process.

All this should be avoided by limiting our recommendations to the issue stipulated before us: health and welfare contributions for 2003-2004.

The Employer did not argue nor prove an inability to pay, therefore, the criteria before us regarding the financial ability of the public school employer must be deemed settled: it is indeed within the financial ability of the Employer to agree to the Association's proposal to fully fund the CVT Plan "D" for 2003-2004. It **chose** not to pay. The Employer's adopted budget, as approved by the Governing Board in September of 2003, changed significantly during the course of the year - as most budgets do. Of particular note, though, is the dramatic reduction in the budget lines for certificated salaries and employee benefits (the 1000 and 3000 series) between September 2003 and later budget reports from early 2004. Absent any evidence from the Employer explaining these budget reductions, I conclude that the Employer re-distributed budget monies away from these line items to other areas of the budget. If the Employer had maintained the budgeted amounts in the 1000 and 3000 series, it would have had sufficient funds to pay for Plan "D" for 2003-2004.

The Employer's apparent re-distribution of monies away from salaries and benefits into other areas of the budget is against the interest and welfare of the public. Indeed, it is the Employer's prerogative to exercise its discretion with the budget, but in turn, it has to submit that exercise of discretion to review against public standards and to be held accountable for not meeting those standards. Arguably, one of the highest accepted public standards is attracting, hiring and maintaining a highly qualified and highly motivated certificated instructional staff. Numerous studies have underscored the importance of the classroom teacher in a child's academic achievement. The Federal Government's so-called No Child Left Behind law emphasizes the importance of having highly qualified teachers. The Employer's decision to re-allocate its monies away from salaries and benefits into other areas of the budget impacts this accepted public standard by reducing its ability to attract and maintain a highly qualified, highly motivated certificated instructional staff.

Bargaining unit members have been paying about $ 140 per month since October 2003 to maintain their current level of health benefits. They received no salary increase; therefore, their paying more to maintain current benefits amounts to a reduction in their compensation and a lowering of their standard of living. Without question, this has affected morale. Classroom teaching is an extremely demanding job that is best done without the distractions caused by this Employer, namely, which bills to pay, what household budget item must be cut in order to find the money to maintain their benefit levels, plus the frustration and anger employees must feel from the lack of consideration from their employer.

When making their decision to deny employees fully paid benefits, the Employer undoubtedly considered its finances, but did it adequately consider the impact on employees, if it considered the impact on them at all?

The bargaining unit has historically traded salary increases to maintain their benefits levels. By refusing to maintain benefit levels, the Employer now gets two bites out of the apple: it pays lower salaries, and now saves on benefits costs as well.

Traditionally, the teaching profession has attracted talented newcomers in spite of salaries lower than other professions because of its relatively complete benefit package. The Employer breaks this social compact with its budget decision to spend its money in other areas of the budget instead of choosing to maintain benefits levels. The long-term implications of this break in the social compact are alarming. The Employer's budget choices could deter talented potential teaching candidates from entering the profession. Instead of saying, "the demands are great and the salary is low but the benefits are pretty good," potential recruits will begin to say, "the benefits aren't much better than Wal-Mart's, so why do this?"

It is in the public interest to maintain or improve the salary and benefit levels of the teaching profession in order to attract and retain highly qualified, highly motivated certificated instructional staff. Therefore the MJUSD's 2003-2004 budget decisions go against this compelling public interest. Since the Employer chose to re-allocate its monies away from salaries and benefits into other areas of the budget, it needs to be held accountable for failing to meet high public standards in its exercise of budgetary discretion.

The Panel and the Employer should refrain from telling bargaining unit members how to spend their available benefit dollars. Since the Employer has bargained a defined contribution arrangement with the Association for health and welfare benefits, it has waived its interest in benefit plan design. It is improper and inappropriate for any employer to tell its employees how to spend their paycheck, i.e. how much to spend on rent or a mortgage or what car to buy; similarly, it is improper and inappropriate for this Employer to tell bargaining unit members how they should spend their available health care dollars. Pointing out that CVT Plan 9 (out of 10 available plans) can be had in 2003-2004 for the same amount that what Plan 4 (the former Plan "D" - CVT changed its plan names for 2004-2005) cost in 2002-2003 is not a legitimate bargaining proposal. It is merely a palliative for the Employer; it is a transparent attempt to deaden the pain it may feel for failing to maintain the benefits and standard of living of its employees. It does nothing, though, for the employees. The Chairman is correct when he states that the "District's proposal... is more apparent than real." What the employees may save in monthly premium costs by choosing Plan 9 is lost through higher deductibles and co-pays if they use the plan.

The bargaining unit members and the Association are intelligent and can make their own decisions about plan design. Plan 4 (or Plan "D") has a modest plan design; it is not a "Cadillac" or first dollar plan, and the Employer should maintain it as fully-paid for its employees. When it refuses, however, to maintain an adequate fully-paid plan, then the Panel and the Employer should leave it up to the Association to determine if its members prefer monthly premiums in exchange for lower deductibles, co-insurance and co-pays, or no monthly premiums and higher out-of-pocket costs for utilization. Similarly, the Panel should leave it up to the Association to determine if it wants to terminate or modify its other benefit plans in order to re-direct that money to health benefits. We do not recommend to them what car to buy with their money, nor should we recommend to them what benefit plans they should buy with the limited contribution from the Employer.

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The issue of health benefits is difficult for all parties. I concur that the cost of maintaining benefit plans is onerous for public school employers. I hope that the Chairman and Employer Representative on the Panel concur that universal health care is a right held by all. The solution, however, is beyond our scope. It is no more proper for the Panel to attempt the social engineering of teacher attitudes toward benefits than it would be for us to call for substantive reform through universal coverage and a single payer system in this Report. Therefore, my conclusions and recommendations are as follows:

1. The sole issue before this Panel is whether the Employer should raise its contribution toward health and welfare benefits for members of the Association's bargaining unit for 2003-2004.

2. It is in the interest of the public to attract and retain highly qualified, highly motivated certificated instructional staff for the compelling interest of improving student achievement.

3. Maintaining or improving the compensation, including the offering of fully-paid, reasonable and adequate health and welfare benefits for certificated instructional staff, is essential to meet this compelling public interest.

4. Plan 4 (prior Plan "D") is a reasonable and adequate health plan; Plan 9 (prior Plan "F") is not.

5. It is within the financial ability of the public school employer to provide a fully paid, reasonable and adequate health and welfare benefit for Association bargaining unit members. The Employer did not argue nor prove an inability to pay; rather, it argued it was reasonable to choose not to pay.

6. Therefore, the Employer should make the budget allocation decisions necessary to meet the compelling public interest of a fully paid, reasonable and adequate

health and welfare benefit by maintaining a contribution level for 2003-2004 to cover the premium costs for benefits inclusive of CVT Plan 4 (Plan "D").

7. Since Association bargaining unit members have already paid the difference between the 2002-2003 contribution from the Employer and the 2003-2004 premiums for Plan 4, and since the Employer's 2003-2004 budget is already closed, the parties should meet when the 2003-2004 unaudited actuals are complete in early September and agree to dedicate undesignated reserves to reimbursing bargaining unit members for their out-of-pocket premium payments as much as possible.

8. The parties should ignore the Report's recommendations for 2004-2005 and engage in good faith collective bargaining to settle any disputes they may have over salaries, benefits, and other terms and conditions of employment.

Respectfully submitted,

DATED: August 30, 2004

Jim Schlotz
CTA Appointed Factfinder

Christopher D. Burdick
Arbitrator • Mediator • Alternative Dispute Resolution

August 31, 2004

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Re: Factfinding: PERB No. SA-1M-2781-E (CTA and Marysville JUSD)

Dear Parties:

Enclosed you will find the report of the Factfinding Panel in the dispute between the California Teachers Association and the Marysville Joint Unified School District. All of the panel members have signed the Report. The dissenting opinion of CTA is attached to the Report.

Please be advised that California Government Code section 3548.3 provides that "....any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings public within ten(10) days after their receipt." Please refer to PERB Regulation 32800 regarding the manner in which the Report must be made public.

Very Truly Yours,

Christopher D. Burdick

Chair, Factingfinding Panel

enclosures

cc: PERB - Mr Smith
Jim Schlotz, CTA Panel Member
Kenneth Hall, District Panel Member

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